



January 12, 2000

Mr. Steven D. Monté
Assistant City Attorney
Police Legal Liason
City of Dallas
501 Police & Courts Building
Dallas, Texas 75201

OR2000-0116

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#131231.

The Dallas Police Department (the "department") received a request for a copy of an internal affairs investigation. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You have submitted a representative sample of the requested information.¹ We have considered the exception you claim and reviewed the submitted information.

First, we note that contrary to the requestor's assertion, the department timely submitted its request for a decision from this office. Section 552.301(b) of the Government Code requires the department to submit its request for a decision within ten business days of its receipt of the written request for information. The department received the request for information on October 28, 1999. Therefore, the ten-business-day deadline was November 12, 1999. This office received the department's request for a decision on November 11, 1999. Thus, the department's request for a decision was submitted timely.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 incorporates

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the doctrine of common law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy excepts from disclosure private facts about an individual. *Id.* Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also* Open Records Decision Nos. 470 (1987) (concluding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common-law privacy), 455 (1987) (concluding that kinds of prescription drugs a person is taking are protected by common law privacy), 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/ seizures, or emotional/mental distress is protected by common law privacy). However, the public has a genuine interest in information concerning a public employee's job performance and the reasons for dismissal, demotion or promotion. Open Records Decision No. 444 at 5-6 (1986); *see also* Open Records Decision No. 208 (1978) (disciplinary action against public employee available to public).

After careful review, we conclude that the requested documents are not excepted from disclosure by a common law right of privacy under section 552.101. Therefore, except for the driver's license number, the requested information must be released.

Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license issued by an agency of this state. Therefore, you must withhold the driver's license number under section 552.130 and release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

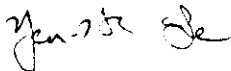
have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/KSK/ljp

Ref: ID#131231

Encl. Submitted documents

cc: Mr. Harold B. Cornish
601 Nora Lane
DeSoto, Texas 75115
(w/o enclosures)